

Claim No. SCT 264972

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Marshall v. Paul, 2006 NSSM 59

BETWEEN:

LISA MARSHALL

CLAIMANT

- and -

JOHN PAUL, and INDIAN BROOK BAND COUNCIL,

DEFENDANT

**Adjudicator David TR Parker
Heard September 25, 2006
Decision November 27, 2006**

**Counsel: M. Ann Levangie represented the Claimant
Gary A. Richard represented the Defendant Indian Brook Band Council
John Paul, the Defendant did not appear**

DECISION AND ORDER

Parker:-This matter came before the Small Claims Court of Truro and Province of Nova Scotia on the 25th day of September, A.D. 2006.

This matter came before the Small Claims Court and the Court was advised that the Defendant John Paul had certain medical conditions which would not allow his attendance. John Paul's non-attendance was not the reason for an adjournment but rather it was adjourned to allow the Court to consider arguments on a motion by Mr. Richard. Mr. Richard is of the view that this

Court does not have jurisdiction to hear the claim against his client the Indian Brook Band Council. (“IBBC”)

The pleadings of the Claimant are in summary that the Claimant owed three mobile homes and also a fourth mobile home was owed by the Claimant and Defendant John Paul. The Claimant states that these mobile homes were placed on Indian Brook First Nation Reserve properties. The Claimant states that the Defendant John Paul collected rents paid by the Defendant IBBC. John Paul would provide the Claimant with one half of those rents. This arrangement apparently took place sometime after July 2003 until April 2005 when the Defendant John Paul stopped paying monies to the Claimant. The Claimant states that she then conveyed legal title to another person, Richard Luke Paul, Jr., in January of 2006. The Claimant then states that the Defendant IBBC was to pay rents to Richard Luke Paul, Jr. however it has not done so, and it continues to pay John Paul.

The Claimant therefore claims against John Paul one half of the rents from April 2005 until January 2006, and all of the rents allocated from January 2006 to date.

The Claimant also claims against IBBC for all rents paid since January 17, 2006.

Assuming all the statements stated in the pleadings are factual, there is no privity of contract between the Claimant and IBBC. The Claimant is in effect requesting this Court to make a declaratory judgment or an Order of Mandamus between the Claimant and IBBC This Court does not have jurisdiction to grant such Orders As well the Claimant is asking this Court o deal with an agreement between IBBC and someone other than the Claimant where no privity exists.

The Claimant may well have a valid contractual claim against John Paul and possibly against Richard Luke Paul Jr. and ultimately whether there were valid contractual agreements will be determined on the evidence presented at trial.

The claim against IBBC is struck for two reasons.

1. There is no claim on the face of the Claimant's pleadings to say there was a contract between the Defendant IBBC and the Claimant, nor is there any tortuous allegation.
2. This court is a statutory court and has no inherent jurisdiction to make declaratory orders or orders of Mandamus or such other equitable relief.

I wish to thank counsel for their submissions on jurisdiction however it is not necessary to consider all their arguments on the authority of this court to hear matters involving band councils.

The hearing is set to proceed against John Paul on December 11, 2006, and assuming the amended claim has been served on John Paul it shall be heard at that time accordingly.

Dated at Truro, this 27 day of November, 2006.

David T.R. Parker
Small Claims Court Adjudicator